

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**BOND PHARMACY, INC., d/b/a AIS
HEALTHCARE,**

Plaintiff,

v.

**ANTHEM HEALTH PLANS OF VIRGINIA,
INC., d/b/a ANTHEM BLUE CROSS AND
BLUE SHIELD,**

Defendant.

Civil Action No. 1:22-cv-01343-CMH-IDD

**DEFENDANT’S BRIEF IN SUPPORT OF ITS
MOTION TO FILE DOCUMENTS UNDER SEAL**

Defendant/Counterclaimant Anthem Health Plans of Virginia, Inc., d/b/a Anthem Blue Cross and Blue Shield (“Anthem”), by counsel, states as follows in support of its Motion to File Documents Under Seal. Anthem seeks to file the following documents under seal: the unredacted version of Anthem’s Opposition Memorandum to Plaintiff’s Motion to Preclude, including Exhibits 1 and 2 to that Memorandum, and states as follows:

1. “It is undisputed that judicial proceedings are generally open to the public and that there exists a right of public access to judicial records and documents. It is also uncontested, however, that this right of access is not unlimited.” *Woven Elecs. Corp. v. Advance Grp., Inc.*, 930 F.2d 913 (4th Cir. 1991) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978)). The common law presumption of access “can be rebutted where other interests, such as sensitive commercial information, outweigh the public’s interest. The common law balancing test is within the trial court’s discretion.” *BASF Plant Sci., LP v. Commonwealth Sci. & Indus. Rsch. Organisation*, No. 2:17-CV-503, 2019 WL 8108115, at *1 (E.D. Va. Aug. 15, 2019).

2. On May 19, 2023, Anthem and Plaintiff/Counterclaim Defendant Bond Pharmacy, Inc., d/b/a AIS Healthcare (“AIS”), filed a Stipulated Confidentiality Agreement and Protective Order. ECF No. 50.

3. Paragraphs 10 and 11 of that Stipulated Confidentiality Agreement and Protective Order prohibit the Parties from “disclos[ing] or permit[ting] the disclosure of Confidential Information” or “Attorney’s Eyes Only Information” “to any other person or entity,” except in limited enumerated circumstances. ECF No. 50, ¶¶ 10–11; *see also id.* ¶¶ 4, 6 (defining “Confidential Information” and “Attorney’s Eyes Only Information”).

4. Anthem’s Opposition Memorandum to Plaintiff’s Motion to Preclude, including Exhibits 1 and 2 to that Memorandum, have been designated “Confidential” or “Attorneys’ Eyes Only” by Anthem or AIS under the Stipulated Confidentiality Agreement and Protective Order, or contain information throughout that has been designated as such.

5. These documents contain confidential and proprietary internal business information, strategic planning, or protected health information, release of which would purportedly harm Anthem or AIS.

6. These documents are “Confidential Information” or “Attorney’s Eyes Only Information” under the Stipulated Confidentiality Agreement and Protective Order. *Id.* at ¶¶ 4, 6.

7. The Stipulated Confidentiality Agreement and Protective Order requires Anthem to file these documents under seal. *Id.* at ¶¶ 10(d), 11(a).

8. Anthem is also filing herewith a Notice of Sealing Motion as required by Local Rule 5(C).

9. WHEREFORE, Defendant/Counterclaimant Anthem Health Plans of Virginia, Inc., d/b/a Anthem Blue Cross and Blue Shield requests that the Court enter the proposed order attached

to the Motion to Seal as **Exhibit 1** authorizing and directing Anthem to file its Anthem's Opposition Memorandum to Plaintiff's Motion to Preclude, including Exhibits 1 and 2 to that Memorandum, under seal, and directing the Clerk of Court to maintain such documents under seal pending further order of the Court.

Date: February 12, 2024

ANTHEM HEALTH PLANS OF
VIRGINIA, INC. D/B/A ANTHEM BLUE
CROSS AND BLUE SHIELD

/s/ Michael E. Lacy

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